

Title	<b>Rules and Form for Filing False Claims Actions under Seal</b> (adopt Cal. Rules of Court, rules 243.5, 243.6, 243.7, and 243.8; adopt form MC-060)
Summary	Under the False Claims Act, the complaint and other papers submitted early in the case must be filed under seal by law. But litigants and the courts are sometimes unfamiliar with, or uncertain about, the proper procedures for handling filings in such cases. No rules currently provide guidance on this subject. As a result, there have been problems with the inadvertent disclosure of confidential information. New rules 243.5–243.8 and form MC-060 would provide guidance on the procedures for filing papers in False Claims Act cases.
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665, patrick.o'donnell@jud.ca.gov
Discussion	<p><u>The False Claims Act</u></p> <p>The False Claims Act permits a whistle blower, known as a “<i>qui tam</i> plaintiff” or a “realtor,” to file an action on behalf of the government alleging that the government was the victim of financial misdeeds. By law, a <i>qui tam</i> complaint is required to be filed under seal for an initial 60 days pending an investigation and determination by the Attorney General or the appropriate local prosecuting authority—or both—whether to intervene and assume control of the false claims action. If a motion to extend time to intervene is pending or an order extending time to intervene is granted, the action remains under seal. (See Gov. Code, 12652(c).)</p> <p><u>The Proposed Rules and Form</u></p> <p><i>1. New Rules 243.5–243.8</i></p> <p>To provide guidance to litigants and the courts on the procedures for handling confidential documents filed under the False Claims Act, four new statewide rules would be adopted. First, rule 243.5 would clarify that these new rules rather than the current sealed records rules apply to documents filed in such cases. This rule would also prescribe what records must be kept under seal under the Act, and what information may be included on the register of actions accessible to the public as long as a case remains under seal. Finally, the rule would indicate</p>

which persons may have access to sealed case files, and which may not.

New rule 243.6 would prescribe the procedures for filing records in False Claims Act cases. It would clarify that no separate orders are necessary to seal papers initially filed in such cases because sealing is required by statute. (See Gov. Code, § 12650(c).) The rule would require the presiding judge, in counties where filings are permitted in more than one location, to designate a particular location where filings must be made in False Claims Act cases. This would ensure that papers filed under the Act are handled by persons knowledgeable and experienced in the filing of documents under seal in such cases. Finally, rule 243.6 would require that the complaint and all other papers filed while a case is under seal have a *Confidential Cover Sheet—False Claims Act* (form MC-060) affixed to the first page.

Rule 243.7 would provide that motions for extension of time under Government Code section 12652 may be applied for ex parte under rule 379. This procedure would be consistent with the statutory scheme under the False Claims Act.

New rule 243.8 deals with the unsealing of records and the management of cases under the False Claims Act. Subdivision (a) would require that records remain under seal until the government notifies the court whether it will intervene. This notification must be made within the 60-day time period initially provided in the statute or within the time extended by court order. (See Gov. Code, § 12652(c).) Subdivision (b) would provide that state and local authorities must coordinate their activities to provide timely and effective notice to the court whether any governmental entities may still intend to intervene and whether the seal has not been lifted. Subdivision (c) would provide that the court, in cases involving multiple local government entities, may designate a lead prosecuting authority. Subdivision (d) would require that a notice of intervention or nonintervention be accompanied by a proposed order indicating which documents are to be unsealed and which to remain sealed under the order. The last subdivision of the rule would clarify how False Claims Act cases are to be managed under the rules.

2. *Confidential Cover Sheet—False Claims Actions* (form MC-060)  
An important means to insure the proper handling of False Claims Act cases would be the new confidential cover sheet. This cover sheet

must be affixed to the first page of the complaint and to all other papers filed under seal.

The cover sheet would immediately notify the court that the filing of the attached document is to be specially handled consistent with the Government Code and the new rules. The cover sheet also would contain the specific information about the paper to be filed which may be included in the register of actions accessible to the public. Finally, the form would contain various instructions and statements that would assist litigants, the courts, and the public in understanding the procedures for filing papers in False Claims Act cases.

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Attachment

## **PROPOSAL**

Rules 243.5, 243.6, 243.7, and 243.8 would be added to the California Rules of Court, effective July 1, 2002, to read:

### **Rule 243.5. Filing False Claims Act records under seal**

(a) **[Application]** Rule 243.5–243.8 apply to the filing of records under the False Claims Act, Government Code section 12650 et seq. As to these records, rules 243.1–243.4, 12.5, and 56 on sealed records to not apply.

(b) **[Definitions]**

(1) “Attorney General” means the Attorney General of the State of California.

(2) “Prosecuting authority” refers to the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.

(3) “Qui tam plaintiff” refers to a person who files a complaint under the False Claims Act.

(4) Other definitions. Unless the context indicates otherwise, the definitions in Government Code section 12650 apply to rules 243.5–243.8.

(c) **[Confidentiality of records filed under the False Claims Act]** Records of actions filed by a *qui tam* plaintiff must initially be filed as confidential and under seal as required by Government Code section 12652(c). Until the seal is lifted, the records in the action must remain under seal, except as otherwise provided in this rule.

(d) **[Persons permitted access to sealed records in False Claims Act cases]** As long as the records in a False Claims Act case are under seal, public access is prohibited to the records in the case, including not only filed documents but also to any computerized information that would disclose the identity of the plaintiff or plaintiffs, defendant or defendants, and other information about the case. Only the information concerning filed records contained on the confidential cover sheets prescribed under rule 243.6(c) is to be entered into the register of actions accessible to the public.

- 1           (1) [Parties permitted access to the sealed court file] As long as the file is  
2           under seal, the only parties permitted access to the court file are the  
3           following:  
4  
5           (A) The Attorney General;  
6  
7           (B) A prosecuting authority for the political subdivision on whose behalf  
8           the action is brought, provided however that the political subdivision  
9           is not named as a defendant; and  
10  
11          (C) A prosecuting authority for any other political subdivision interested  
12          in the matter whose identify has been provided to the court by the  
13          Attorney General.  
14  
15          (2) [Parties not permitted access to the sealed court file] As long as court  
16          records are under seal, no defendant is permitted to have access to the  
17          court records or any other information regarding the case. Defendants not  
18          permitted access include any political subdivision that has been named as  
19          a defendant in a False Claims Act action.  
20  
21          (3) [Qui tam plaintiff's limited access to sealed court file] The *qui tam*  
22          plaintiff is permitted access to all documents filed by the qui tam plaintiff  
23          and to such other documents as the court may order.  
24

25 **Rule 243.6. Procedures for filing records in False Claims Act cases under seal**  
26

- 27          (a) **[No order required]** Upon the filing of an action under the False Claims Act,  
28          the complaint, motions for extensions of time, and other papers filed with the  
29          court must be kept under seal. No separate orders sealing these records are  
30          necessary because the sealing of these records is required under Government  
31          Code section 12652.  
32  
33          (b) **[Special procedures for filing in counties where filings are accepted in**  
34          **multiple locations]** In counties where complaints in unlimited civil cases may  
35          be filed in more than one location, the Presiding Judge must designate one  
36          particular location where all filings in False Claims Act cases must be made.  
37  
38          (c) **[Special cover sheet omitting names of the parties]** In False Claims Act  
39          cases, the complaint and every other paper filed while the case is under seal  
40          must have a completed Confidential Cover Sheet—False Claims Action (form  
41          MC-060) affixed to the first page.  
42

1 **(d) [Filing of papers under seal]** When the complaint or other papers are filed  
2 under seal, the clerk must stamp both the cover sheet and the caption page of  
3 the papers.

4  
5 **(e) [Custody of sealed records]** Records in False Claims Act cases that are  
6 confidential and under seal must be securely filed and kept separately from the  
7 public file in the case.

8  
9 **Rule 243.7. Motions for extension of time**

10  
11 Motions for extension of time under Government Code section 12652 may be  
12 applied for ex parte under rule 379.

13  
14 **Rule 243.8. Unsealing of records and management of False Claims Act cases.**

15  
16 **(a) [Expiration or lifting of seal]** Records to which public access has been  
17 prohibited under Government Code section 12652(c) must remain under seal  
18 until the Attorney General and every prosecuting authority involved in the  
19 action have notified the court of their decision to intervene or not intervene.  
20 They must provide this notice within 60 days of the filing of the complaint or  
21 before an order extending the time to intervene has expired, unless a new  
22 motion to extend time to intervene is pending, in which case the seal remains  
23 in effect until a ruling is made on the motion.

24  
25 **(b) [Coordination of state and local authorities]** The Attorney General and all  
26 local prosecuting authorities must coordinate their activities to provide timely  
27 and effective notice to the court that (1) political subdivisions remain interested  
28 in the action which have not yet determined whether to intervene, or (2) that  
29 the seal has been extended by the filing or grant of a motion to extend time to  
30 intervene and therefore has not expired by operation of law.

31  
32 **(c) [Designation of lead local prosecuting authority]** In a False Claims Act case  
33 in which the Attorney General is not involved or has declined to intervene and  
34 a number of local prosecuting authorities remain interested in the action, the  
35 court may designate a lead prosecuting authority to keep the court apprised of  
36 whether all the prosecuting authorities have either intervened or declined to  
37 intervene, and whether the seal is to be lifted.

38  
39 **(d) [Order unsealing record]** The Attorney General or other prosecuting authority  
40 filing a notice of intervention or nonintervention must submit a proposed order  
41 indicating the documents that are to be unsealed or to remain sealed under the  
42 order.

1  
2 **(e) [Case management]** The court, at the request of the parties, or on its own  
3 motion, may hold a conference in a False claims Act case at any time to  
4 determine what case management is appropriate for the case, including the  
5 lifting or partial lifting of the seal, the scheduling of trial and other events, and  
6 any other matters that may assist in managing the case. Cases under the False  
7 Claims Act are exempt from rules 201.7 and 212, but are subject to such case  
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**CONFIDENTIAL**

MC-060

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):</p> <p>TELEPHONE NO.: FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> OTHER (specify):</p>		<p>FOR COURT USE ONLY</p> <p><b>DRAFT-3</b></p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p> <p>BRANCH NAME:</p>		
<p>PLAINTIFF: [UNDER SEAL]</p> <p>DEFENDANT: [UNDER SEAL]</p>		
<p><b>CONFIDENTIAL COVER SHEET—FALSE CLAIMS ACTION</b></p>		<p>CASE NUMBER:</p>

<p><b>INSTRUCTIONS:</b> This civil action is brought under the False Claims Act, Government Code section 12650 et seq. The documents filed in this case are under seal and are confidential pursuant to Government Code section 12652(c).</p> <p>This <i>Confidential Cover Sheet</i> must be affixed to the caption page of the complaint and to any other paper filed in this case until the seal is lifted.</p> <p>You should check to determine if papers filed in False Claims Act cases must be filed at a particular location in this court.</p>	<p>Seal to expire on (date): UNLESS: (1) Motion to extend time is pending; or (2) Extended by court order</p>
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- a. The document to which this cover sheet is affixed is:
- (1) ☐ Complaint for damages for violation of the False Claims Act.
  - (2) ☐ *Civil Case Cover Sheet* (form 982.2(b)(1)).
  - (3) ☐ Motion for an extension of time to intervene.
  - (4) ☐ Affidavit or other document in support of the motion for an extension of time.
  - (5) ☐ Order extending time to intervene (*specify date order expires*):
  - (6) ☐ Other order (*describe*):
  - (7) ☐ Notice from the Attorney General of additional prosecuting authority that may have access to the file.
  - (8) ☐ Other (*describe*):
- b. This *Confidential Cover Sheet* and the attached document must each be separately file stamped by the clerk of the court.

Date: